

Appl. No. 10/634,071
Amdt. dated May 24, 2005
Reply to Office Action of February 25, 2005

Remarks

Claims 1-27 and 50-68 are pending in the instant application. In the Office Action mailed February 25, 2005, the Examiner rejects claims 1-27 and 50-68. Based on the remarks made herein, Applicants respectfully request that the rejections be withdrawn and that the application be passed to allowance.

Claim 1 is amended herein to incorporate the subject matter of claim 2. Claims 5-7, 9-10, 13, 15-16, 18-20, 22-26, 50, 53-55, 57-58, 61, 63-64 and 66-68 are amended herein. The amendments are made to more clearly claim the subject matter of the present invention. The amendments to the claims do not add any new subject matter and are supported by the Specification as originally filed on August 4, 2003.

Applicants also cancel claims 2, 8, 11-12, 14, 17, 27, 52, 56, 59-60 and 62 herein.

Additionally, Applicants present new claims 84 and 85 herein. Newly presented claims 84 and 85 do not contain new matter and are fully supported by the Specification as originally filed on August 4, 2003. Exemplary support for the subject matter of these claims can be found on page 6, lines 19-21 of the Specification.

1. Paragraphs 2-7 of the Office Action Mailed February 25, 2005: Restriction of Claims and Affirmation of Election.

Applicants affirm that they have elected Claim Group I including claims 1-27 and 50-68 for examination in the present application. Applicants reserve the right to seek patent protection for non-elected claims 28-49 and 69-83 in a divisional application.

2. Paragraphs 8-9 of the Office Action Mailed February 25, 2005: Examiner's Summary of Base Elected Claims.

Applicants note the Examiner's characterization of the language of claims 1 and 50 in paragraphs 8 and 9 of the Office Action mailed February 25, 2005. Applicants do not agree with the Examiner's interpretations or the Examiner's conclusions. Applicants believe that the terms used in the presently pending claims are adequately defined in the Specification as filed.

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3. Paragraph 11 of the Office Action Mailed February 25, 2005: Rejection of Claims 16-19 Under 35 U.S.C. §112, second paragraph.

In the Office Action mailed February 25, 2005, the Examiner rejects claims 16-19 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter that Applicants regard as the invention. The Examiner notes that claims 16-19 recite the limitation "pouf product"; the Examiner believes that there is insufficient antecedent basis for this limitation in the claims because independent claim 1 is directed to a "poufable product". Applicants have amended claims 16, 17 and 19 herein to correct the antecedent basis problem and respectfully request that the rejection be withdrawn (claim 18 was already directed to a "poufable product"). Applicants appreciate the Examiner's careful attention to the presently presented claims.

4. Paragraph 14 of the Office Action Mailed February 25, 2005: Rejection of Claims 1-27 Under 35 U.S.C. §103(a).

In the Office Action mailed February 25, 2005, the Examiner rejects claims 1 – 27 under 35 U.S.C. § 103(a) as being unpatentable over International Publication Number WO 95/00116 (hereinafter "the 00116 publication") or Japanese Publication No. 10192188A (hereinafter "the 10192188A publication") in view of U.S. Patent No. 4,108,180 issued to Moerhle (hereinafter "the '180 patent"). Applicants traverse the rejection.

The Examiner believes the 00116 publication discloses netting tubes that are bunched using rope and that the 00116 publication discloses products for cleaning. The Examiner believes the 10192188A publication discloses a bath scrub device made by tying cylindrical netting in its center with a string and that a flower shaped puff is formed. The Examiner acknowledges that neither the 00116 publication nor the 10192188A publication discloses sheets that lie flat or bunch. The Examiner believes the '180 patent discloses reusable tampons that include mesh bags that have draw strings. The Examiner believes that the '180 patent discloses that the bags can lie flat and that the bags bunch when the draw strings are used. The Examiner believes the references are analogous because they all deal with mesh-like materials that have strings, cords or ropes in or around them. The Examiner believes strings, cords and ropes are equivalent when they are used to produce bunching. The Examiner believes it would have been obvious to one having ordinary skill in the art at the time of the invention to employ the bunching technique of the '180 patent to make poufs using the netting of the 00116 publication or the 10192188A publication. The Examiner believes the motivation to employ the bunching technique of the '180 patent to make poufs using the netting of the 00116 publication or the 10192188A publication is found in the '180 patent where the bunching of mesh bags is effected using its draw strings. The Examiner believes

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it is desirable to make poufs having bunching therein to give them the appearance of flowers and, thereby, render them more aesthetically pleasing.

The Examiner also believes the use of plies of netting having different properties is an obvious way to modify the appearance of the poufs. The Examiner believes the size or denier of the netting is an obvious matter of design/engineering choice. The Examiner believes the use of biodegradable materials in the poufs is an obvious way to render the product more acceptable to consumers. Further, the Examiner believes the use of features commonly found in bath poufs is an obvious matter of design/engineering choice.

In order to establish a *prima facie* case of obviousness, three basic criteria must be met: (1) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings; (2) there must be a reasonable expectation of success; and (3) the prior art reference (or references when combined) must teach or suggest all the claim limitations. MPEP §2143. The Examiner bears the initial burden of establishing the *prima facie* case. See In re Piasecki, 223 U.S.P.Q. 785,787, 745 F.2d 1468, 1471 (Fed. Cir. 1984). Applicants respectfully submit that neither the 00116 publication nor the 10192188A publication in view of the '180 patent teach or suggest all of the limitations of the invention as claimed. Further, there is no suggestion or motivation in the 00116 publication or the 10192188A publication to modify their teachings to include the subject matter of the '180 patent.

Independent claim 1, as amended herein, is directed to a poufable product including at least one flat ply of flexible sheet material having at least one side edge and including at least one cord. The cord is interlaced with the flat ply of flexible sheet material.

The combinations of (1) the 00116 publication in view of the '180 patent and (2) the 10192188A publication in view of the '180 patent do not teach or suggest all of the limitations of claim 1. In particular, the two combinations of references do not teach or suggest a poufable product including a flat ply of flexible sheet material with an interlaced cord. The Examiner mischaracterizes the disclosure of the '180 patent. The Examiner believes the '180 patent discloses "reusable tampons that include mesh bags that have draw strings" and that "the bags can lie flat and the bags bunch when the draw strings are used". The '180 patent does not disclose reusable tampons that include mesh bags. The '180 patent discloses a device 10 that includes a body 16 of nontoxic, body fluid absorbable material such as a cellular plastic material and a layer of fibrous textile material 18. (See Col. 2, lines 41-45 of the '180 patent). Therefore, the '180 patent does not disclose a mesh bag. The fibrous textile material 18 may form a bag

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when in a closed disposition. (See Col. 2, lines 57-60 of the '180 patent). The fibrous textile material 18 always surrounds the absorbable material 16.

In addition to not teaching or suggesting all of the limitations of claim 1, the Examiner's choice of references also fails to have a suggestion or motivation within the references themselves to combine their teachings. The Examiner believes the requisite suggestion/motivation to modify the 00116 publication and the 10192188A publication is provided by the '180 patent in that the drawstring 20 may be pulled to bunch the fibrous textile material 18 to form a bag 24. (See Col. 2, lines 48-60 of the '180 patent). The Examiner merely recites a feature of the reusable tampon described in the '180 patent; the Examiner does not point to language in the '180 patent that would lead one of skill in the art to apply the feature of a fibrous textile material 18 with a drawstring 20 to a polymeric mesh sponge (of the 00116 publication) or to multiple elastic nets (of the 10192188A publication). For at least these reasons, the Examiner has not established a *prima facie* case of obviousness and claim 1 is patentable over the cited references. Applicants respectfully request that the rejection be withdrawn.

Dependent claims 3-7, 9-10, 13, 15-16 and 18-26 are patentable over the cited references for at least the reasons provided for independent claim 1. Further, the Examiner does not establish a *prima facie* case of obviousness of each of these dependent claims. For example, with respect to claims 3, 7 and 10, the Examiner believes the "use of plies of netting having different properties is deemed an obvious way to modify the appearance of the poufs", but the Examiner does not provide how the cited references disclose this feature. Similarly, the Examiner does not provide how the cited references disclose packaging where the packaging activates the bunching on or about the cord (claim 4); a cord fastener (claim 19); a flat ply of flexible material forming a mitt structure (claim 20); the poufable product including a handle (claim 21); the flat ply of flexible material includes a breathable material (claim 23); the flat ply of flexible material includes an impermeable material (claim 24); or the flat ply of flexible material includes a shrinkable material (claim 25). For at least these reasons, Applicants respectfully submit that dependent claims 3-7, 9-10, 13, 15-16 and 18-26 are patentable over the cited references and that the rejection should be withdrawn.

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5. Paragraph 15 of the Office Action Mailed February 25, 2005: Rejection of Claims 50-68 Under 35 U.S.C. §103(a).

By way of the Office Action mailed February 25, 2005, the Examiner rejects claims 50 – 68 under 35 U.S.C. § 103(a) as being unpatentable over the 00116 publication in view of Japanese Publication No. 06344479A (hereinafter “the 06344479A publication”). Applicants traverse this rejection.

The Examiner believes the 00116 publication discloses the conventionality of wrinkled bath products. The Examiner acknowledges that the 00116 publication fails to disclose wrinkled products made by shrinkage. The Examiner believes the 06344479A publication discloses composite sheets that can be made of shrinking yarns and “water shrunk” to yield a mesh appearance and that the composite has a wrinkled appearance. The Examiner believes the 00116 publication and the 06344479A publication are analogous because they both deal with wrinkled products. The Examiner believes it would have been obvious to one having ordinary skill in the art to employ the composite sheets of the 06344479A publication to make wrinkled bathing products (the 00116 publication) in order to make them appear pouf-like. The Examiner also believes the motivation to employ the composite of the 06344479A publication to make the bath products of the 00116 publication is found where shrinkage is said to cause wrinkles in the composite.

Claim 50 is directed to a poufable product including at least one flat ply of flexible sheet material having at least one side edge where the flat ply of flexible sheet material includes a shrinkable material.

The Examiner fails to establish a *prima facie* case of obviousness because the Examiner fails to identify the suggestion or motivation in the references themselves to combine their teachings. Specifically, the Examiner fails to identify a suggestion or motivation in the 00116 publication to form its polymeric mesh sponges of the material described in the Abstract of the 06344479A publication. Conversely, the Examiner fails to identify a suggestion or motivation in the 06344479A publication to use the material described in the Abstract to form the polymeric mesh sponges described in the 00116 publication. The Examiner merely provides that it would have been obvious to employ the composite sheets of the 06344479A publication to make the “wrinkled bathing products” of the 00116 publication because the Abstract of the 06344479A publication provides that shrinkage causes wrinkles. For at least this reason, claim 50 is patentable over the 00116 publication in view of the 06344479A publication. Applicants respectfully request that the rejection be withdrawn.

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Dependent claims 51, 53-55, 57-58, 61 and 63-68 are patentable over the cited references for at least the reasons provided for independent claim 50. Further, the Examiner does not establish a *prima facie* case of obviousness of each of these dependent claims. For example, with respect to claims 51, 55 and 58, the Examiner believes the "use of plies of netting having different properties is deemed an obvious way to modify the appearance of the poufs", but the Examiner does not provide how the cited references disclose this feature. Similarly, the Examiner does not provide how the cited references disclose a flat ply of flexible material forming a mitt structure (claim 64); the poufable product including a handle (claim 65); the flat ply of flexible material includes a breathable material (claim 67); or the flat ply of flexible material includes an impermeable material (claim 68). For at least these reasons, Applicants respectfully submit that dependent claims 51, 53-55, 57-58, 61 and 63-68 are patentable over the cited references and that the rejection should be withdrawn.

In conclusion and for the reasons stated above, Applicants respectfully submit that presently presented claims 1, 3-7, 9-10, 13, 15-16, 18-26, 50-51, 53-55, 57-58, 61, 63-68 and 84-85 are in form for allowance.

The Commissioner is hereby authorized to charge any prosecutorial fees (or credit any overpayment) associated with this communication to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875. If a fee is required for an extension of time under 37 C.F.R. 1.136 not accounted for above, such extension is requested and should also be charged to our Deposit Account.

The undersigned may be reached at: (920) 721-2433.

Respectfully submitted,
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